

Biju, vs State of Kerala,

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Court : Kerala

Decided On : Nov-03-2021

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : Bail Appl./6870/2021

Appellant : BIJU,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.
WEDNESDAY, THE 3RD DAY OF NOVEMBER 2021 / 12TH
KARTHIKA, 1943 AGAINST THE ORDER/JUDGMENT IN CRMP
1116/2021 OF DISTRICT COURT & SESSIONS COURT, KOTTAYAM,
KOTTAYAM CRIME NO.412/2021 OF MELUKAVU POLICE STATION,
KOTTAYAM DISTRICT

PETITIONER/ACCUSED: BIJU, AGED 50 YEARS S/O.SUKUMARAN,
KONOTHIL HOUSE, KANJIRAMA KAVALA, MELUKAVU VILLAGE. BY
ADVS. C.K.VIDYASAGAR P.CHANDY JOSEPH
RESPONDENTS/COMPLAINANTS: 1 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF

EKRALA, KOCHI, PIN-682 031. 2 STATION OFFICER, MELUKAVU POLICE STATION, KOTTAYAM DISTRICT, PIN-686 652. OTHER PRESENT: SMT. SEETHA .S. (SR.PP) THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03.11.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

This is an application for anticipatory bail.

2. The petitioner is the accused in Crime No.412/2021 of Melukavu

Police Station, Kottayam District registered alleging commission of offences under Sections 294(b), 354, 324 and 427 of the Indian Penal Code and Section 3(2)(Va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The allegation against the petitioner is that, on 24.07.2021 at about 7

hours, he came to the de-facto complainant's cold storage and caught hold her dress and hit her on her left hand with an iron bar causing injuries and thereby committed the offences alleged against him. The learned counsel for the

petitioner would submit that the de-facto complainant was running an unlicensed fish and meat shop in front of the shop run by the petitioner and refers to various documents produced along with the bail application to show that much before the filing of the complaint which led to the registration of Crime No.412/2021, the petitioner had filed various complaints against the de- facto complainant against the running of her unlicensed shop. It is submitted that the complaint in question was filed only on account of the previous enmity with the petitioner arising from the act of the petitioner in filing complaints against her.

4. The learned Public Prosecutor, on instructions, submits that this

application for anticipatory bail is not maintainable in the light of the provisions contained in Section 18 of the Scheduled Castes and the Scheduled Tribes

(Prevention of Atrocities) Act, 1989 (hereinafter referred to as Atrocities Act). It is submitted that the petitioner had outraged the modesty of the de-facto complainant by catching hold of her and had also caused injuries on her by hitting her with an iron rod. It is also submitted that another person by name Manu who had come to the shop of the de-facto complainant for collecting some money was also attacked by the petitioner. Further allegation against the petitioner is that he had passed lewd comments against the de-facto complainant asking if she was intending to have any relationship with the aforesaid Manu.

5. I have considered the rival submissions and have also perused the

report placed by the Investigating Officer in Crime No.412/2021. The first question is to be considered is whether this application for anticipatory bail is maintainable in the light of the provisions contained in Section 18 of the Atrocities Act.

6. The learned counsel for the petitioner has placed reliance on a

judgment of the Supreme Court in Prathvi Raj Chauhan v. Union of India

and others (AIR 2020 SC 1036) to contend that bar under Section 18 will not apply if, prima facie the provisions of the Atrocities Act are not attracted. He refers to the provisions of the Atrocities Act to contend that the provisions of the Atrocities Act which had been invoked against the petitioner require that the offence must have been committed with the knowledge that the de-facto complainant was a member of a Schedule Caste/Schedule Tribe. He submits that the petitioner was totally unaware of the fact that the de-facto complainant was a member of a Schedule Caste/Schedule Tribe and further submits that even in the first information statement initially given by the de-facto complainant, there was no allegation of any offence under the Atrocities Act.

7. The learned Public Prosecutor is quick to point out that the

petitioner and the de-facto complainant were known to each other for nearly 22 years and it is highly improbable that the petitioner was not aware of the fact that the de-facto complainant belonged to a community coming under one among the

Schedule Castes/Schedule Tribes. She, therefore, submits that the provisions of the Atrocities Act are clearly attracted and the anticipatory bail application cannot be entertained.

8. Having regard to the nature of the allegations and taking into

consideration of the fact that the provisions of the Atrocities Act against the petitioner will be attracted only if the petitioner had committed the offence knowing fully well that the de-facto complainant was a member of a Schedule Caste/Schedule Tribe and with full knowledge of such a fact would the provisions of the Atrocities Act apply and applying the law laid down in *Prathvi Raj Chauhan v. Union of India and others* (supra), I am inclined to hold that prima facie and for the purpose of this bail application, the provisions of the Atrocities Act are not attracted in the facts of the case. I, therefore, hold that the petition for anticipatory bail is maintainable.

9. Coming to the other offences alleged against the petitioner, the only

non bailable offence alleged against the petitioner is that under Section 354 of the Indian Penal Code. Taking note of the allegations in the first information statement and the totality of the facts and circumstances of the case including the fact that the alleged incident took place on a public road at about 7.00 pm and also considering the fact that the petitioner and the de-facto complainant have been known to each other for nearly 22 years (as stated by the prosecution) and there have been no complaints of similar nature against the petitioner, the complaint that the petitioner committed an offence under Section 354 is prima facie not acceptable.

10. In the light of the above and considering the fact that the other

offences alleged against the petitioner are bailable, I allow this application and it is directed that the petitioner shall be released on anticipatory bail in the event of arrest in connection with Crime No.412/2021 of Melakavu Police Station, Kottayam District, subject to the following conditions:-

(i) Petitioner shall execute a bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties for the like sum to the satisfaction of the Jurisdictional Court;

(ii) Petitioner shall appear before the investigating officer in Crime No.412/2021 of Melukavu Police Station, Kottayam District on every day from 10.11.2021 till 17.11.2021 and thereafter whenever called upon to do so;

(iii) Petitioner shall not attempt to contact the de-facto complainant or to interfere with the investigation or to influence or intimidate any witness in Crime No.412/2021 of Melukavu Police Station, Kottayam District;

(iv) Petitioner shall co-operate with the investigation.

(iv) Petitioner shall not involve in any other crime while on bail. If any of the aforesaid conditions are violated, the investigating officer in Crime No.412/2021 of Melukavu Police Station, Kottayam District may file an application before this Court, for cancellation of bail. I make it clear that the observations in this order are only for the purpose of deciding the entitlement of the petitioner for anticipatory bail and should not be treated as a finding on any point before any Court of law.
Sd/- GOPINATH P. JUDGE bng/28/10/21

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